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|---|-------------|----------------------|--------------------------------------|------------------|
| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
| 10/715,871 | 11/17/2003 | John M. Epley | 054-304-3 | 5600 |
| 35940 7590 04/11/2007 ATER WYNNE LLP 222 SW COLUMBIA, SUITE 1800 PORTLAND, OR 97201-6618 | | | EXAMINER HOEKSTRA, JEFFREY GERBEN | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3736 | |
| SHORTENED STATUTORY PERIOD OF RESPONSE | | MAIL DATE | DELIVERY MODE | |
| 3 MONTHS | | 04/11/2007 | PAPER | |

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/715,871

Applicant(s)

EPLY, JOHN M.

Examiner

Jeffrey G. Hoekstra

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 9-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 20-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Notice of Amendment

1. In response to the Pre- Appeal Brief Conference decision mailed 03/13/2007.

The following reiterated grounds of rejection are set forth:

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-8 and 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Densert et al (US 6,159,171, hereinafter Densert) in view of Richards (US 4,014,320) as broadly as structurally claimed.

4. Densert et al (US 6,159,171) discloses the claimed invention including the following:

5. For claims 1, 7, and 20-23, Densert discloses a head stabilized medical device (1), comprising:

- plural different vestibular-parameter measuring/ modifying vestibular-parameter data delivering and data receiving devices (elements 19,20,28 and 30) anchored to said frame; and
- a communication structure (the wires as seen in Figures 1-2), for operatively connecting, transmitting and receiving, vestibular-relevant parameter data devices to

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a computer structure (29) (column 4 lines 49-52) capable of executing real-time vestibular diagnosis/treatment algorithms with feedback responses (column 7 lines 3-6) effective to alter air-pressure stimuli.

6. For claims 2 and 8, Densert discloses air-pressure modifying vestibular measuring/modifying devices (column 1 lines 6-48).
7. For claims 3-6, Densert discloses a sound delivering device creating pressure waves through air removably insertable into the ear comprising a tubular body (24) with a tapered insertion bulb or nozzle (25) effective to sealably engage the ear, and capable of piercing the tympanic membrane, and having a digitally manipulated maneuverable enlargement region (17 and 18) connected to said body at a proximal location of the inserted end.
8. Thus, Densert discloses the claimed invention except for explicitly disclosing or explicitly showing a stabilized head-dependent wearable frame structure. Richards teaches and shows (as best seen in Figure 1) an air-pressure modifying vestibular measuring/modifying device (10), comprising: a stabilized head-dependent wearable frame structure (12). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the vestibular diagnostic device as taught by Densert, with the vestibular diagnostic device as taught by Richards for the purpose of increasing the diagnostic efficacy of a vestibular diagnostic device with positional stabilization for accurate correlation of data.

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Response to Arguments

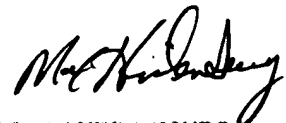
9. Applicant's arguments with respect to claims 1-8 and 20-23 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey G. Hoekstra whose telephone number is (571)272-7232. The examiner can normally be reached on Monday through Friday, 8:00 a.m. to 5:00 p.m. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max F. Hindenburg can be reached on (571)272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


MAX F. HINDENBURG
SUPERVISOR
ART UNIT 3736
JAN 14 2010

JH

